

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DERRICK SIMS

No. C 08-01691 SBA (PR)

Plaintiff,

V.

DR. MICHAEL SAYRE, et al.,

## Defendants.

**ORDER DENYING MOTION FOR  
RECONSIDERATION OF DENIAL OF  
APPOINTMENT OF COUNSEL; AND  
GRANTING PLAINTIFF BRIEF  
EXTENSION OF TIME TO FILE  
OPPOSITION**

Before the Court is Plaintiff's motion entitled, "Ex Parte Motion for Assignment of Counsel," which shall be construed as a motion for reconsideration of the Court's previous Orders denying appointment of counsel. Defendants oppose Plaintiff's motion.

Rule 60(b) provides for reconsideration only upon a showing of: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered before the court's decision; (3) fraud by the adverse party; (4) a void judgment; (5) a satisfied or discharged judgment; or (6) any other reason justifying relief. See Fed. R. Civ. P. 60(b). Subparagraph (6) requires a showing that the grounds justifying relief are extraordinary. Mere dissatisfaction with the Court's order, or belief that the Court is wrong in its decision, are not grounds for relief under subparagraph (6) or any other provision of Rule 60(b). "[T]he major grounds that justify reconsideration involve an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." Pyramid Lake Paiute Tribe of Indians v. Hodel, 882 F.2d 364, 369 n.5 (9th Cir. 1989) (quoting United States v. Desert Gold Mining Co., 433 F.2d 713, 715 (9th Cir. 1970)).

Plaintiff presents no grounds that warrant reconsideration. As explained in the Court's previous Orders denying appointment of counsel, there is no constitutional right to counsel in a civil case unless an indigent litigant may lose his physical liberty if he loses the litigation. See Lassiter v. Dep't of Social Services, 452 U.S. 18, 25 (1981); Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir.

1 1997) (no constitutional right to counsel in § 1983 action), withdrawn in part on other grounds on  
2 reh'g en banc, 154 F.3d 952 (9th Cir. 1998) (en banc). The court may ask counsel to represent an  
3 indigent litigant under 28 U.S.C. § 1915 only in "exceptional circumstances," the determination of  
4 which requires an evaluation of both (1) the likelihood of success on the merits, and (2) the ability of  
5 the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. See  
6 id. at 1525; Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wilborn v. Escalderon, 789 F.2d  
7 1328, 1331 (9th Cir. 1986). Both of these factors must be viewed together before reaching a  
8 decision on a request for counsel under § 1915. See id. At present, the Court finds that no  
9 exceptional circumstances exist which would warrant seeking volunteer counsel to accept a pro bono  
10 appointment. Moreover, Plaintiff has been able to articulate his claims adequately pro se in light of  
11 the complexity of the issues involved. See Agyeman v. Corrections Corp. of America, 390 F.3d  
12 1101, 1103 (9th Cir. 2004). Accordingly, Petitioner's motion for reconsideration is DENIED  
13 because appointment of counsel is not necessary at this time.

14 Plaintiff's opposition to Defendants' motion for summary judgment is presently overdue. The  
15 Court GRANTS Plaintiff an extension of time in which to file his opposition to Defendants' motion.  
16 The time in which Plaintiff may file his opposition will be extended up to and including **January 10,**  
17 **2011.** If Defendants wish to file a reply brief, they shall do so no later than **thirty (30) days** after  
18 the date Plaintiff's opposition is filed. **No further extensions of time will be granted in this case**  
19 **absent exigent circumstances.**

20 This Order terminates Docket no. 68.

21 IT IS SO ORDERED.

22 DATED: 12/8/10

  
23 SAUNDRA BROWN ARMSTRONG  
United States District Judge

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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 DERRICK SIMS,

5 Plaintiff,

6 v.

7 MICHAEL SAYRE et al,

8 Defendant.

Case Number: CV08-01691 SBA

**CERTIFICATE OF SERVICE**

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
10 Court, Northern District of California.

11 That on December 9, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
14 located in the Clerk's office.

15 Derrick D. Sims J-20913  
16 Pelican Bay State Prison  
17 5905 Lake Earl Drive  
P.O. Box 7500  
Crescent City, CA 95531

18 Dated: December 9, 2010

19 Richard W. Wiking, Clerk  
20 By: LISA R CLARK, Deputy Clerk

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